

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

March 11, 2004

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on March 11, 2004. Governor-Chairman, John Hoeven, called the meeting to order at 1:30 PM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, Chairman
Jeff Olson, representing Roger Johnson, Commissioner,
Department of Agriculture, Bismarck
Charles Halcrow, Member from Drayton
Elmer Hillesland, Member from Grand Forks
Curtis Hofstad, Member from Starkweather
Jack Olin, Member from Dickinson
Robert Thompson, Member from Page
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

STATE WATER COMMISSION MEMBERS ABSENT:

Larry Hanson, Member from Williston
Harley Swenson, Member from Bismarck

OTHERS PRESENT:

State Water Commission Staff
Approximately 50 people interested in agenda items

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF AGENDA

There being no additional items for the agenda, Governor Hoeven announced the agenda approved as presented.

**CONSIDERATION OF FINAL DRAFT
MINUTES OF DECEMBER 5, 2003
STATE WATER COMMISSION MEETING -
APPROVED**

The final draft minutes of the December 5, 2003 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Hofstad, seconded by Commissioner Olin, and unanimously carried, that the final draft minutes of the December 5, 2003 State Water Commission meeting be approved as prepared.

**CONSIDERATION OF FINAL DRAFT
MINUTES OF FEBRUARY 11, 2004
STATE WATER COMMISSION
AUDIO CONFERENCE CALL
MEETING - APPROVED**

The final draft minutes of the February 11, 2004 State Water Commission audio conference call meeting were approved by the following motion:

It was moved by Commissioner Hofstad, seconded by Commissioner Olin, and unanimously carried, that the final draft minutes of the February 11, 2004 State Water Commission audio conference call meeting be approved as prepared.

**2003-2005 BIENNIUM
AGENCY PROGRAM
BUDGET EXPENDITURES**

In the 2003-2005 biennium, the State Water Commission has two special line items - administrative and support services, and water and atmospheric

resources. David Laschkewitsch, accounting manager, presented and discussed the allocated program expenditures for the period ending January 31, 2004, reflecting 29 percent of the 2003-2005 biennium. All expenditures are within the authorized budget.
SEE APPENDIX "A"

The Contract Fund spreadsheet, attached hereto as **APPENDIX "B"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds. The total approved for projects is \$81,157,897, leaving a balance of \$18,025,460 available to commit to projects.

**2003-2005 BIENNIUM
RESOURCES TRUST FUND
AND WATER DEVELOPMENT
TRUST FUND REVENUES**

The Office of Management and Budget (OMB) developed the state's budget assuming the State Water Commission would spend the Resources Trust Fund money first and then spend the Water

Development Trust Fund money. The agency actually spent money from both funds in the 2001-2003 biennium, with the majority of the money coming from the Water Development Trust Fund. The State Water Commission appeared before the Emergency Commission on January 6, 2004 to correct the spending authority limits for the Resources Trust Fund and the Water Development Trust Fund. The Emergency Commission also approved a \$3 million increase in the contract fund spending authority, which is a carryover from the 2001-2003 biennium.

The oil extraction tax deposits into the Resources Trust Fund total \$2,768,742, and are \$131,186, or 4.5 percent behind the budgeted revenues. Deposits into the Water Development Trust Fund total \$103,934, which was not anticipated. The first scheduled payment is in April, 2004, and is projected to be \$10.3 million.

**DEVILS LAKE HYDROLOGIC UPDATE
(SWC PROJECT NO. 416-01)**

The current elevation of Devils Lake is 1446.5 feet msl. At this elevation, the lake has a surface area of 120,900

acres and storage of 2.37 million acre-feet of water. At this time last year, the lake was at an elevation of 1446.9 feet msl.

On January 20, 2004, the Commission staff took snow sample measurements across the Devils Lake basin. These samples showed an average snow depth of 7-10 inches, with an average water content of 1.8-2.5 inches. Additional sample measurements were taken on February 9, 2004 and March 9, 2004, with the snow depth of 11 inches at the sites and the water equivalent measurements of approximately 3.18 inches. The snow and water equivalent measurements are similar to the February, 2001 measurements, which were 7.4-12.2 inches of snow depth and 2.1-3.8 inches of water content.

The National Weather Service released its 180-day long range probabilistic outlook for Devils Lake on February 24, 2004, which showed the 50 percent exceedance elevation for Devils Lake to be 1446.7 feet msl. The 10 percent exceedance elevation is listed as 1447.5 feet msl. Although the basin experienced a dry fall, if the recent snowfalls continue, the basin could expect to see a fairly significant runoff in the spring.

The current elevation of Stump Lake is 1414.7 feet msl, which equates to 147,100 acre-feet of water in storage and a surface area of 8,100 acres. The Jerusalem channel has ceased flowing due to being iced in.

**CORPS OF ENGINEERS DEVILS
LAKE OUTLET PROJECT
(SWC Project No. 416-01)**

On February 26, 2003, the Corps of Engineers announced that a 300 cubic feet per second (cfs) outlet from Pelican Lake to the Sheyenne River had been identified as the preferred alternative to alleviate flood damages at Devils Lake if the lake continues to rise. The Corps released the final Environmental Impact Statement (EIS) for public review in April, 2003, and comments were accepted until June 19, 2003.

On October 14, 2003, the Corps of Engineers signed a Record of Decision (ROD) recommending that an outlet be constructed from Devils Lake to reduce flood damages and to reduce the risk of a natural overflow from Devils Lake.

The Corps continues to address the conditions that were outlined in the ROD, which included a determination by the U.S. State Department on whether or not the outlet project would violate the Boundary Waters Treaty Act of 1909. On January 20, 2004, Secretary of State, Colin Powell, provided a letter to the Corps of Engineers, attached hereto as **APPENDIX "C"**, detailing his review of the project plans for the federal outlet and providing assurances that the project does not violate the Boundary Waters Treaty Act of 1909 as currently designed since the plans assume no biota of concern exists in Devils Lake that are not already present in the Red River system.

Governor Hoeven expressed concerns relative to a letter, dated March 10, 2004, from the Assistant Secretary of Legislative Affairs, U.S. Department of State, attached hereto as **APPENDIX "D"**, regarding the federal and state outlet projects for Devils Lake. The letter, in part, states: ..."The Government of Canada expressed concern that the North Dakota state project, as currently envisioned, would not be consistent with the 1909 Boundary Waters Treaty Act, which would apply to North Dakota's project. The Department of State, therefore, urges that in the spirit of transboundary cooperation and to avoid unnecessary conflicts between the United States and Canada or its concerned provinces, you consult with us and appropriate other agencies at the earliest opportunity before proceeding with the temporary outlet."

(Note: Governor Hoeven's response, dated March 24, 2004, to the State Department's letter is attached hereto as **APPENDIX "E"**).

**NORTH DAKOTA DEVILS
LAKE OUTLET PROJECT -
AWARD OF CONTRACT 4, FINAL
CANAL SEGMENTS, TO PARK
CONSTRUCTION COMPANY,
MINNEAPOLIS, MN; AND
AWARD OF CONTRACT 5, CANAL
STRUCTURES, TO INDUSTRIAL
BUILDERS, INC., FARGO, ND
(SWC Project No. 416-01)**

The State of North Dakota is pursuing a temporary emergency phased outlet project from West Bay to the Sheyenne River. The project is based on a two-year construction timeline, with construction commencing in the fall of 2003 and operational in 2005.

On March 5, 2003, the State Water Commission approved the continued construction of the North Dakota Devils Lake outlet project, and allocated the expenditure of \$7.5 million from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Phases 1(a) and 1(b).

On August 6, 2003, the State Water Commission approved the award of the Devils Lake Emergency Outlet, Initial Canal Segments, Contract 2, to Park Construction, Inc., Minneapolis, Minnesota, in the amount of \$766,614. The contract is for 3.2 miles of 300 cubic feet per second (cfs) open channel. Park Construction commenced construction on October 21, 2003, and construction was shutdown on November 4, 2003 due to frost. The contractor anticipates a 16-week construction period for this contract, and will complete the remaining portions of the contract in the spring of 2004.

A hearing was held on September 22, 2003 to provide several groups including the People to Save the Sheyenne, the Peterson Coulee Outlet Association, and the Benson County Commission who are opposed to the state's outlet project, an opportunity to present testimony on the State Engineer's Drain Permit, which was approved on July 2, 2003. On October 2, 2003, the State Engineer upheld his earlier decision of granting the permit to the state for the construction of the outlet project. On October 31, 2003, the People to Save the Sheyenne appealed the State Engineer's decision to District Court, which was later withdrawn. Therefore, the State Engineer's drain permit stands.

The state received the 402 Water Quality Discharge Permit from the North Dakota Department of Health on August 22, 2003. The Department received several requests to reconsider the permit, therefore, the comment period was extended until October 20, 2003. In letters to those individuals questioning the issuance of the permit, the Department stated that no new information had been provided. Therefore, the Department's original decision to issue the permit remains intact.

At its meeting on December 5, 2003, the State Water Commission approved the funding necessary to bid and construct the final phases of the state's outlet project in the amount of an additional \$19 million from the funds appropriated to the State Water Commission in the 2003-2005 biennium.

The power supply will require contracting with the local Rural Electric Cooperative (REC) for the electrical power supply to the two pump stations that would consist of 115 kV lines and a substation. Completion of the surveying, mapping, and design work of the power facilities would allow for construction to be completed in 2004. The total cost for the power supply portion of Phase 1(b) is approximately \$2.5 million. A meeting was held on February 4, 2004 with representatives of Northern Plains Electric Cooperative and Central Power Electric Cooperative to discuss the issues relating to providing electrical power to the state's outlet pump site locations. The choice of non-interruptible power at \$9.20 per kW per month versus interruptible power at \$2.00 per kW per month is being considered.

On February 26, 2004, bids were opened for Devils Lake Emergency Outlet Contract 4, Final Canal Segments. There were four bids received from the following for contract 4: Park Construction Company, Minneapolis, MN; Orrin A. Holen Construction, Inc., McClusky, ND; Industrial Builders, Inc., Fargo, ND; and Guthmiller Earthmoving, Inc., Medina, ND. The apparent low bid received was \$2,371,134 from Park Construction Company, Minneapolis, MN, which was \$1,317,866 (36 percent) under the engineer's estimate of \$3,689,000. The project engineer reviewed the bids received and recommended the award of contract 4 to Park Construction Company, Minneapolis, MN. The award of the contract and notice to proceed are dependent on the completion of the contract documents, all permits and easements for the project are in place, and concurrence from legal counsel.

On February 26, 2004, bids were opened for Devils Lake Emergency Outlet Contract 5, Canal Structures. There was one bid received from the following for contract 5: Industrial Builders, Inc., Fargo, ND. An additional bid was submitted but was not read due to non-compliance with the bidding requirements. The apparent low bid received was \$5,041,000 from Industrial Builders, Inc., Fargo, ND, which was \$401,000 (8.6 percent) over the engineer's estimate of \$4,640,000. The project engineer reviewed the bids received and recommended the award of contract 5 to Industrial Builders, Inc., Fargo, ND. The award of the contract and notice to proceed are dependent on the completion of the contract documents, all permits and easements for the project are in place, and concurrence from legal counsel.

It was the recommendation of the State Engineer that the State Water Commission approve the awards of Devils Lake Emergency Outlet Contract 4, Final Canal Segments, in the amount of \$2,371,134, to Park Construction Company, Minneapolis, MN; and, the Devils Lake Emergency Outlet Contract 5, Canal Structures, in the amount of \$5,041,000, to Industrial Builders, Inc., Fargo, ND.

It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission approve the awards of Devils Lake Emergency Outlet Contract 4, Final Canal Segments, in the amount of \$2,371,134, to Park Construction Company, Minneapolis, MN; and, the Devils Lake Emergency Outlet Contract 5, Canal Structures, in the amount of \$5,041,000, to Industrial Builders, Inc., Fargo, ND.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONTRACT AND PROJECT STATUS
(SWC Project No. 1736)**

James Lennington, project manager for the Southwest Pipeline Project, provided the following project status report:

Contract 4-1B - Final Phase of Construction at Intake, Dodge, Richardton, and Jung Lake Pumping Facilities: Contract 4-1B was awarded to PKG Contracting, Inc., Fargo, ND, on January 9, 2003. The contract added pumps at the intake, Dodge and Richardton pump stations. At the intake, one 200 Hp pump was added in the Basin Electric intake facility and a 600 Hp pump was added to the intake booster pump station. At Dodge, one 700 Hp pump was added, and at Richardton one 900 Hp pump was added. Pumping capacities were increased from 7,850 gallons per minute (gpm) to 10,500 gpm at the intake, and from 6,150 gpm to 8,950 gpm at Dodge and Richardton. The contract included an additional 350 Hp pump at the Jung Lake pump station, increasing the capacity of that facility from 1,900 gpm to 2,350 gpm. The contract also included the addition of a 26-ton carbon dioxide tank at the Dickinson water treatment plant. The completion date for contract 4-1B was November 1, 2003. The contract is essentially complete with electrical and administrative items remaining.

During field assembly, a "split ring" in the shaft coupling between the motor and the pump at Richardton was inadvertently left out. This caused two shafts to de-couple during the startup and the pump impeller to drop into the bowls. The pump was removed and sent to the manufacturer for repair.

Medora-Beach Contract Status: The following tables show the funding plan developed for constructing the first phase of the Medora-Beach regional service area in the 2003-2005 biennium, and the facilities and contract status for development:

Medora-Beach Phase 2003-2005 Funding

<u>State Grant</u>	<u>USDA Grant</u>	<u>USDA Loan</u>	<u>Total</u>
\$ 5,000,000	\$ 1,260,000	\$ 1,540,000	\$ 7,800,000

Contract Status and Estimated Costs
2003-2005 Biennium Construction

<u>Contract</u>	<u>Status</u>	<u>Facility</u>	<u>Description</u>	<u>Estimated Cost</u>
2-5B	Awarded	Medora-Beach Main Transmission Pipeline	46.4 miles 12"-6"	\$ 4,898,300
5-9	Awarded	Belfield Reservoir	750,000 gallons	635,000
5-10	Awarded	Fryburg Standpipe	480,000 gallons	457,700
5-11	Pending	Beach Standpipe	420,000 gallons	574,600
7-8A	Pending	1st Phase Fryburg Rural Distr. SA	21 miles, 33 users	1,391,300
6	CO signed	Telemetry, Phase 1		<u>120,100</u>
Total				\$ 8,077,000

The total shown in the above table exceeds the total funding package by \$277,000, although the allocation for the Southwest Pipeline Project in the State Water Commission's budget for the 2003-2005 biennium is \$6,149,000. There is approximately \$187,000 available from the insurance claim for the New Hradec tank which was damaged in a windstorm in August, 1999, and it is anticipated approximately \$100,000 could remain from the Bowman-Scranton phase, although the transfer of funds would require USDA approval. Therefore, it appears there should be adequate funding to award contracts 5-11 and 7-8A.

Southwest Water Authority Operations Budget and Water Rates for 2004:

Under the Agreement for the Transfer of Management, Operations, and Maintenance Responsibilities for the Southwest Pipeline Project, the Southwest Water Authority is required to submit a budget to the Secretary of the State Water Commission by December 15 of each year. The budget is deemed approved unless the Secretary of the Commission notifies the Authority of his disapproval by February 15. The Southwest Water Authority submitted their budget, which is attached hereto as **APPENDIX "F"**, and has been reviewed by the Commission staff. The Southwest Water Authority operations budget and the water rates for 2004 are deemed reasonable and adequate.

Declining Block Water Rate: In March, 2002, the Southwest Water Authority adopted a declining block water rate for rural users on a three-year trial basis. The Authority approved a reduction in the rate for rural users from \$3.60/1000 gallons to \$2.60/1000 gallons for water over 10,000 gallons per month. The declining block rate was implemented in July, 2002 on a trial basis with a goal of

increasing the number of customers exceeding 10,000 gallons per month and the amount of water over that figure by 30 percent after three years. The effect of the declining block water rate is reviewed under the Southwest Water Authority's budget review process.

Data was received for water use consumption in 2003 and a comparison was made for the period of July through June for customers who used water in both 2001-2002 and in 2002-2003 (this excludes users who were added since June, 2001). The following table shows a comparison of water use by user category (the change in city use is included for a comparison; the declining block rate does not apply to the cities):

**Southwest Pipeline Project
Water Use
2002-2003 minus 2001-2002**

<u>User Type</u>	<u>Change</u>
High consumption user - 1 unit	10.7 percent
High consumption user - 2 units	21.7 percent
High consumption user - 3 units	-27.9 percent
Pasture Taps	99.3 percent
Standard	8.9 percent
All rural users	11.6 percent
All but Pasture taps	9.4 percent
High consumption users	12.5 percent
Cities	1.8 percent

A three-year time frame to determine the effect of the declining block rate on rural water use and expenses should diminish the drought affect on usage in one year. Pasture taps users showed the largest percentage increase in consumption, which was the primary target user category for the declining block rate and probably would be most affected by the dry conditions experienced in 2002 and 2003.

***SOUTHWEST PIPELINE PROJECT -
AWARD OF CONTRACT 5-11,
BEACH TANK, TO ADVANCE TANK &
CONSTRUCTION, WELLINGTON, CO
(SWC Project No. 1736)***

On February 26, 2004, bids were opened for Southwest Pipeline Project contract 5-11, Beach Tank. This contract is for a potable water storage reservoir located approximately four miles east of Beach along N.D. Highway

10, about one mile south of U.S. Interstate 94. Two tank configuration options were allowed for this contract - a 380,000 gallon standpipe, or a 300,000 gallon pedesphere. The standpipe could be either bolted and glass fused steel or welded and painted steel. The standpipe would be 28 feet in diameter by 83 feet high. The pedesphere would be approximately 88 feet tall with a spheroid diameter of about 47 feet.

There were four bids received from the following for contract 5-11: Maguire Iron, Inc., Sioux Falls, SD; Advance Tank & Construction, Wellington, CO; Fisher Tank Co., Cropwell, AL; and Caldwell Tanks, Inc., Louisville, KY. Bids from Fisher Tank Co. and Caldwell Tanks, Inc. did not have a valid North Dakota contractor license contained within the bid bond envelope and, therefore, were not opened. The apparent low bid received was \$429,945 from Advance Tank & Construction, Wellington, CO, under the standpipe configuration, which was \$755 under the project engineer's estimate of \$430,700.

James Lennington explained the contract documents allow the State Water Commission to select the most advantageous bid. The project engineer reviewed the bids received and recommended the award of contract 5-11 to Advance Tank & Construction, Wellington, CO. The award of the contract and notice to proceed are dependent on the completion of the contract documents, approval by USDA, Rural Development, and a legal review. The contract documents specify that the tank must be completed no later than October 1, 2004. Funding to allow the award of this contract is provided by the allocation to the Southwest Pipeline Project in the State Water Commission's 2003-2005 biennium budget, the 2003 Series A bond authorized by the State Water Commission at its December 5, 2003 meeting, and the corresponding USDA, Rural Development grant.

It was the recommendation of the State Engineer that the State Water Commission approve the award of Southwest Pipeline Project contract 5-11, Beach Tank, in the amount of \$429,945, to Advance Tank & Construction, Wellington, CO, under the standpipe configuration with the October 1, 2004 completion date.

It was moved by Commissioner Hofstad and seconded by Commissioner Halcrow that the State Water Commission approve the award of Southwest Pipeline Project contract 5-11, Beach Tank, in the amount of \$429,945, to Advance Tank & Construction, Wellington, CO, under the standpipe configuration with the October 1, 2004 completion date.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
AWARD OF CONTRACT 7-8A,
FRYBURG SERVICE AREA,
PHASE I, RURAL WATER
DISTRIBUTION SYSTEM
(SWC Project No. 1736)**

On February 25, 2004, bids were opened for Southwest Pipeline Project contract 7-8A, Fryburg Service Area, Phase I, Rural Water Distribution System. The contract is for approximately 42.7 miles of PVC pipe ranging in size from 6 inches through 1 1/2 inches in diameter.

Because of concerns with funding, the contract was broken into two bid schedules: bid schedule 1 consists of 26.7 miles of service lines which involve construction on the Little Missouri National Grasslands administered by the U.S. Forest Service. Because of the requirements of the permit, it was the goal on the Medora-Beach phase to limit the construction activity on Forest Service land to one construction season. Bid schedule 1 was further broken down into schedules 1 and 1A with the difference being the substitution of a prefabricated steel vault for the West Medora underground booster pump station on schedule 1A, versus a concrete vault for the pump station on schedule 1. Bid schedule 2 consists of the remaining 16 miles of service lines not impacting the U.S. Forest Service land, which are primarily located between Belfield and Fryburg.

There were five bids received from the following for contract 7-8A: Mastech, Shevlin, MN; Abbot, Arne & Schwindt, Inc., Moorhead, MN; Carstensen Contracting, Inc., Pipestone, MN; Eatherly Constructors, Inc., Garden City, KS; and Northern Improvement Co., Bismarck, ND. Mastech's bid bond insurance company, while on the list of sureties authorized to do business in North Dakota, did not appear on the U.S. Treasury Circular 570, which is a requirement of USDA, Rural Development. In the event the list of sureties on the Circular, which was available at the bid opening, was not up to date, Mastech's bid was opened and read. After the bid opening, it was confirmed that Mastech's surety was not on the Treasury Circular and, therefore, their bid was rejected from further consideration. The apparent low bid received for combined bid schedules 1A and 2 was \$1,058,658.20 from Abbot, Arne & Schwindt, Inc., Moorhead, MN, which was \$91,383.30 under the project engineer's estimate of \$1,150,041.50 (8.63 percent). Abbot, Arne & Schwindt's bid for schedule 1A (steel vault) was \$600 higher than for schedule 1. The \$600 difference is felt to be worth the benefit of a steel vault over concrete for the underground booster.

James Lennington explained the contract documents allow the Commission to select the most advantageous bid. The project engineer reviewed the bids received and recommended the award of contract 7-8A to Abbot, Arne & Schwindt, Inc., Moorhead, MN. The award of the contract and notice to proceed are dependent on the completion of the contract documents, approval by USDA, Rural Development, and a legal review. The contract documents specify that the tank must be completed no later than September 15, 2004. Funding to allow the

award of this contract is provided by the allocation to the Southwest Pipeline Project in the State Water Commission's 2003-2005 biennium budget, the 2003 Series A bond authorized by the State Water Commission at its December 5, 2003 meeting, and the corresponding USDA, Rural Development grant.

It was the recommendation of the State Engineer that the State Water Commission approve the award of Southwest Pipeline Project contract 7-8A, Fryburg Service Area, Phase I, Rural Water Distribution System, in the amount of \$1,058,658.20, to Abbot, Arne & Schwindt, Inc., Moorhead, MN, under combined schedules 1A and 2.

It was moved by Commissioner Olin and seconded by Commissioner Halcrow that the State Water Commission approve the award of Southwest Pipeline Project contract 7-8A, Fryburg Service Area, Phase I, Rural Water Distribution System, in the amount of \$1,058,658.20, to Abbot, Arne & Schwindt, Inc., Moorhead, MN, under combined schedules 1A and 2.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
STATUS REPORT
(SWC Project No. 237-04)**

James Lennington, project manager for the Northwest Area Water Supply (NAWS) project, provided the following project status report:

Contract 2-1B - Pretreated Water Pipeline: On April 22, 2003, the State Water Commission authorized the award of contract 2-1B to Coughlin Construction, Minot, ND. The contract was executed by the Commission's Chief Engineer and Secretary on May 22, 2003. The contract is for approximately 9.5 miles of 30-inch and 36-inch ductile iron pipe, extending from the end of contract 2-1A to a point across N.D. Highway 23. The contract includes an above ground pressure reducing valve vault located adjacent to U.S. Highway 83 just south of the bored and cased highway crossing. The contract completion date was October 31, 2003, but an extension was granted until November 14, 2003 because of delays in awarding the contract.

Coughlin Construction did not complete the contract by the contract completion date specified in the contract documents. The contract specifies that liquidated damages in the amount of \$1,500 per day can be assessed to the contractor for each day beyond the contract completion date. Coughlin Construction submitted a new construction schedule, indicating a completion target date of June 12, 2004. The schedule and damages are currently being discussed with Coughlin Construction.

Contract 2-1C - Pretreated Water Pipeline Station 1600+00 to Max Pumping Station: Contract 2-1C consists of approximately 61,006 (about 11.6 miles) of 36-inch steel or ductile iron pipe extending from N.D. Highway 23 to the east side of the city of Max. The plans and specifications for contract 2-1C were received on November 21, 2003 and submitted to the Bureau of Reclamation and the North Dakota Department of Health for review. On February 26, 2004, bids were opened on contract 2-1C. The project engineer's estimate for construction of this contract is \$6.33 million, and the project cost is approximately \$7.5 million.

Manitoba Lawsuit: On November 14, 2003, the United States District Court for the District of Columbia, Judge Rosemary Collyer, denied motions made by the U.S. Department of the Interior and the State of North Dakota to dismiss the action that had been brought by the Province of Manitoba against the Department of the Interior. The motions to dismiss the case were based on jurisdictional and procedural issues.

The Manitoba suit, filed in October, 2002, against the Secretary of the Interior, Commissioner of Reclamation, Reclamation's Great Plains Regional Director, and Reclamation's Dakotas Area Manager, challenges the adequacy of the NAWS environmental assessment and the Finding of No Significant Impact (FONSI). Manitoba is seeking a declaratory judgment and an injunction requiring the defendants to conduct an Environmental Impact Statement (EIS) and enjoining the defendants from expending federal funds until they have fully complied with such requirements. North Dakota petitioned the court to intervene as a defendant and was unopposed.

The Bureau of Reclamation is preparing the administrative record for the case. When the administrative record has been completed, the parties will then file motions for summary judgment. A hearing will be held before Judge Collyer at which time she will decide whether the Bureau's environmental assessment was sufficient or whether the more comprehensive EIS should have been prepared.

Fred Wagner of Beveridge & Diamond, P.C., a Washington, DC attorney, has been retained to complement the staff of the North Dakota Office of the Attorney General in the lawsuit.

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
AUTHORIZE STATE ENGINEER
TO AWARD CONTRACT 2-1C TO
WINTER BROTHERS UNDERGROUND,
INC., SIOUX FALLS, SD
(SWC Project No. 237-04)**

Bids were opened for Northwest Area Water Supply Project contract 2-1C on February 26, 2004. The contract documents specify that the State Water Commission has 90 days to award the contract after the bid opening, which occurs on May 26, 2004. The contract is for approximately 11.5 miles of 36-inch main transmission pipeline extending from N.D. Highway 23 to the city of Max.

There were seven bids received from the following for contract 2-1C: Winter Brothers Underground, Inc., Sioux Falls, SD; ERS Constructors, Highland Ranch, CO; S.J. Louis Construction, Inc., Waite Park, MN; BRB Contractors, Topeka, KS; Robert Gibb & Sons, Fargo, ND; Western Municipal Construction, Inc., Billings, MT; and, Kemper Construction, Minot, ND. The apparent low bid received was \$6,088,848 from Winter Brothers Underground, Inc., Sioux Falls, SD, which was \$241,152 under the project engineer's estimate of \$6,330,000.

James Lennington explained that the contract documents allow the State Water Commission to select the most advantageous bid. The project engineer reviewed the bids and recommended the award of contract 2-1C to Winter Brothers Underground, Inc., Sioux Falls, SD. A combination of MR&I funds and local funds will be used for this contract. The contract will require approval by the Bureau of Reclamation, and the award of the contract and notice to proceed are dependent on the completion of the contract documents and a legal review. The time for completion is specified no later than December 3, 2004.

Mr. Lennington explained that although the Bureau of Reclamation approved the State Water Commission's bid specifications for contract 2-1B, which permitted the use of ductile iron pipe or corrosion resistant steel pipe, the award of the contract was delayed because the Bureau had received a protest from Northwest Pipe Company stating that the ductile iron pipe specified by the State Water Commission did not satisfy the Bureau's minimum corrosion prevention criteria. The Bureau responded that their guideline was being misinterpreted and they were confident in the project's design specifications.

The NAWS specifications are designed to encourage competition between the ductile iron and steel pipe industries. Mr. Lennington explained that the specifications have provided a situation with comparable products from the standpoint of service, price, operations, and installation. Both ductile iron and steel have been used with considerable success in North Dakota and South

Dakota for many years including areas with highly corrosive soils. Approximately 32 miles of steel pipe and 89 miles of ductile iron pipe are on the Southwest Pipeline Project raw water line from Lake Sakakawea to Dickinson. Mr. Lennington informed the Commission members that the dispute over the project specifications could occur again with contract 2-1C.

It was the recommendation of the State Engineer that the State Water Commission authorize the State Engineer to award Northwest Area Water Supply Project contract 2-1C to Winter Brothers Underground, Inc., Sioux Falls, SD, contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation.

It was moved by Commissioner Hofstad and seconded by Commissioner Olin that the State Water Commission authorize the State Engineer to award Northwest Area Water Supply Project contract 2-1C to Winter Brothers Underground, Inc., Sioux Falls, SD, contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
MAPLE RIVER WATER RESOURCE
DISTRICT FOR ADDITIONAL STATE
COST PARTICIPATION IN CASS COUNTY
DRAIN NO. 14 RECONSTRUCTION
(SWC Project No. 1070)**

A request from the Maple River Water Resource District was presented for the State Water Commission's consideration for an additional state cost participation for the reconstruction of Cass County Drain No. 14.

Cass County Drain No. 14 is approximately 13 miles in length and is being, or has been reconstructed in Sections 20, 29, and 32 of Tier 139 North, Range 50 West, and in Sections 5, 7, and 18 of Tier 138 North, Range 50 West. The drain outlets into an unnamed tributary of the Maple River. The reconstruction of a 4.5 mile stretch consists of deepening, widening/realigning, and flattening the side slopes for channel stability. The proposed unfunded work to be completed is the replacement of the existing bridge and associated culverts on the south line of Section 7 in Warren Township. The bridge will be replaced with a 12'x10' double cell RCB culvert and 260 linear feet of culverts will be installed at the four corners of the road crossing. The bridge replacement, which includes engineering fees, is estimated to cost \$255,000, of which \$254,000 is considered eligible for a 35 percent cost share in the amount of \$88,900. State Water Commission Drain Permit No. 2910 was approved on September 8, 1999.

The project engineer submitted a revised cost estimate for this portion of the drain reconstruction of \$1,324,101, of which \$1,258,255 was considered eligible for a 35 percent state cost participation (\$440,389). Previously approved cost share actions by the State Water Commission include: April 10, 2000 - \$136,000; August 16, 2001 - \$200,000; and August 15, 2002 - \$15,489. The total approved state cost share contribution is \$351,489.

It was the recommendation of the State Engineer that the State Water Commission approve a cost share of 35 percent of the eligible items, not to exceed an additional \$88,900 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the reconstruction of Cass County Drain No. 14. Affirmative action by the State Water Commission would increase the state's cost share contribution to \$440,389.

It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission approve a cost share participation in the Cass County Drain No. 14 reconstruction project at 35 percent of the eligible items, not to exceed an additional \$88,900 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds.

This action increases the total State Water Commission cost share contribution to \$440,389.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR
STATE COST PARTICIPATION IN
CASS COUNTY DRAIN NO. 21C
IMPROVEMENT RECONSTRUCTION
(SWC Project No. 1075)**

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for state cost participation in Cass County Drain No. 21C improvement reconstruction project. The purpose is to reconstruct a portion of the drain to improve the drain system.

The proposed project is located in Sections 1 and 12 of Tier 138 North, Range 50 West. The reconstruction is an improvement of the existing ditch starting at its outlet (downstream end) into the Horace diversion channel and proceeding upstream (south) for approximately two miles ending with the County Road No. 6 crossing. Drain 21C continues upstream approximately 5 miles from this point.

The ditch bottom is being lowered 3/4 of a foot to 2 feet and the bottom width is being reconstructed to 10 feet wide. The side slopes will be flattened from 4:1 to 5:1. Two section line crossings, a bridge, and arch pipe will be removed and replaced with new corrugated metal pipe arches, and 100 linear feet of existing culverts will be removed and replaced. Approximately 400 feet of culverts will be installed in the road ditches at the section line crossings and approximately 400 feet of culverts will be installed as field inlets at six sites along the drain. Other construction work includes riprap, material testing and seeding.

The project engineer's cost estimate is \$237,269, of which \$215,000 is considered eligible for conditional state cost share participation as a rural flood control project at 35 percent of the eligible costs (\$75,250). The request before the State Water Commission is for a 35 percent cost share in the amount of \$75,250.

The Southeast Cass Water Resource District will utilize existing Cass County Drain No. 21C maintenance funds for the local share of the project. The preliminary engineering plans have been submitted for review and all applicable state permits will be applied for during the final design. Under the State Water Commission's policy, conditional approval of rural flood control drainage projects will be allowed, subject to the contingencies. Final approval will be granted upon issuance of the required state permit(s) and approval of the project's final design.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$75,250 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Cass County Drain No. 21C improvement reconstruction project.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission conditionally approve state cost participation in the Cass County Drain No. 21C improvement reconstruction project at 35 percent of the eligible items, not to exceed \$75,250 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds, satisfaction of all permit requirements, and approval of the project's final design.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR
STATE COST PARTICIPATION
IN CASS COUNTY DRAIN NO. 27
IMPROVEMENT RECONSTRUCTION
(SWC Project No. 1080)**

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for state cost participation in the Cass County Drain No. 27 improvement reconstruction project. The reconstruction consists of stabilizing the channel banks and deepening the channel to allow for drainage improvements in the upper portion of the watershed.

The proposed project involves the reconstruction of approximately 6,000 feet of the drain upstream of 45th Street. The reach will be deepened 2-3 feet, widened to a 16-foot bottom width, and the slopes will be flattened to 5:1. The reach proposed for reconstruction is within the Fargo city limits. A sediment analysis determined that approximately 1,046 cubic yards of sediment will be removed during the reconstruction.

The reach immediately downstream between 45th Street and Interstate 29 was recently reconstructed. It was recognized that the drain, originally a rural flood control project, had begun providing an urban benefit as well due to the urbanization between 45th Street and Interstate 29. The greatly increased size of the cross section was viewed as providing storage capacity for the urban runoff in the area. The Southeast Cass Water Resource District requested cost share assistance for that project and, ultimately, the recommendation presented to the State Water Commission for this reach of the project was to provide cost share assistance at a level of 10 percent of the eligible costs. This approach was based on the fact that the proposed cross section had the capacity to carry in excess of a 100-year event while rural drains are typically designed for 10-year frequencies or less. On September 11, 2000, the State Water Commission approved a 10 percent state cost share participation.

The project engineer's cost estimate is \$719,410, of which \$521,375 is considered eligible for state cost share participation. Upon consideration of the information provided, the State Water Commission's past involvement in Cass County Drain No. 27, and because the watershed contributing to Cass County Drain No. 27 remains predominately rural in nature at this time, the project was determined to be eligible for cost share assistance at 35 percent of the eligible costs (\$182,481). The request before the State Water Commission is for a 35 percent cost share in the amount of \$182,481.

The Southeast Cass Water Resource District will utilize existing Cass County Drain No. 27 maintenance funds for the local share of the project. The State Engineer approved Drain Permit No. 3008 for the project on January 23, 2004.

It was the recommendation of the State Engineer that the State Water Commission approve a cost share of 35 percent of the eligible items, not to exceed \$182,481 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Cass County Drain No. 27 improvement reconstruction project.

It was moved by Commissioner Hofstad and seconded by Commissioner Halcrow that the State Water Commission approve state cost share participation in the Cass County Drain No. 27 improvement reconstruction project at 35 percent of the eligible items, not to exceed \$182,481 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
RANSOM COUNTY-MAPLE RIVER
JOINT WATER RESOURCE DISTRICT
FOR STATE COST PARTICIPATION
IN COBURN DRAIN NO. 2 IMPROVE-
MENT RECONSTRUCTION PROJECT
(SWC Project No. 1890)**

A request from the Ransom County-Maple River Joint Water Resource District was presented for the State Water Commission's consideration for cost share participation in the Coburn Drain No. 2 improvement reconstruction project. This project, in addition to work on Cass County Drain No. 54, will alleviate flooding problems in the area.

The Coburn Drain No. 2 project is located between Sections 35 and 36, of Tier 137 North, Range 53 West, Watson Township, Cass County, and Sections 2 and 3, of Tier 136 North, Range 53 West, Coburn Township, Ransom County. The drain was originally constructed in 1996 and is connected to Cass County Drain No. 54 via a culvert in the northwest quarter of Section 36. The drain serves an area of over 4,000 acres. A sediment analysis was completed indicating no sediment will be removed during the reconstruction.

The proposed project will involve the reconstruction of 11,240 feet of existing channel, which will be excavated to a .04 percent slope with a 10-foot bottom and 4:1 side slopes. Additional culverts and a water control structure will be added at existing culvert locations to increase and regulate flow capacity. The drain will continue to be operated as originally designed. Water from the

drain will not be allowed to enter Cass County Drain No. 54 until the water surface elevation at the culvert located in the northeast corner of Section 35 in Watson Township is at elevation 1054 or lower. Flows will be controlled by a sluice gate located in the water control structure near the railroad tracks.

The preliminary engineering plans have been submitted for review and all applicable state permits will be applied for during the final design. Under the State Water Commission's policy, conditional approval of rural flood control drainage projects will be allowed, subject to a six-month limit for receiving a positive local assessment vote. Final approval will be granted upon notification of a positive local assessment vote, satisfaction of the permit requirements, and receipt/approval of the project's final design.

The project engineer's cost estimate is \$165,000, of which \$127,275 is considered eligible for conditional state cost participation as a rural flood control project at 35 percent of the eligible costs (\$44,546). The request before the State Water Commission is for a 35 percent cost share in the amount of \$44,546.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$44,546 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Coburn Drain No. 2 improvement reconstruction project.

It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$44,546 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Coburn Drain No. 2 improvement reconstruction project. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months of the State Water Commission's funding approval, satisfaction of all permit requirements, and approval of the project's final design.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
TRAILL COUNTY WATER RESOURCE
DISTRICT FOR STATE COST PARTI-
CIPATION IN TRAILL COUNTY DRAIN
NO. 38 (NORWAY DRAIN 38)
IMPROVEMENT RECONSTRUCTION
(SWC Project No. 1334)**

Wold Townships. The purpose of the project is to reduce flood damage to agricultural properties.

A request from the Traill County Water Resource District was presented for the State Water Commission's consideration for state cost participation in the improvement reconstruction of Traill County Drain No. 38, also known as Norway Drain 38, which is an assessment project located in Norway and

Wold Townships. Traill County Drain No. 38 was originally constructed in 1963, and an extension to the drain was added in 1975. The total watershed area of the drain is 10.5 square miles. The field drain leading into the legal drain was constructed in the mid-1970s and a 24-inch corrugated metal pipe was installed.

The proposed reconstruction project involves the original drain and extension of 5.28 miles, and an additional 2.75 miles of the existing field drain. The channel will be reconstructed to an 8'-12' bottom width, 4:1 side slopes, and grades of less than 0.10 percent. All existing culverts for the crossings on the original drain and extension will be removed and replaced with corrugated metal pipe and pipe arches. The outlet is an unnamed coulee that flows into the Goose River.

The preliminary engineering plans have been submitted for review and all applicable state permits will be applied for during the final design. Under the State Water Commission's policy, conditional approval of rural flood control drainage projects will be allowed, subject to a six-month limit for receiving a positive local assessment vote. Final approval will be granted upon notification of a positive local assessment vote, satisfaction of the permit requirements, and receipt/approval of the project's final design.

The project engineer's cost estimate is \$688,826, of which \$634,776 is considered eligible for conditional state cost participation as a rural flood control project at 35 percent of the eligible costs (\$222,172). The request before the State Water Commission is for a 35 percent cost share in the amount of \$222,172.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$222,172 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Traill County Drain No. 38 (Norway Drain 38) improvement reconstruction project.

It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$222,172 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Traill County Drain No. 38 (Norway Drain 38) improvement reconstruction project. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months of the State Water Commission's funding approval, satisfaction of all permit requirements, and approval of the project's final design.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF ADDITIONAL STATE
COST SHARE PARTICIPATION FOR
MOUNT CARMEL DAM REHABILITATION
PROJECT, CAVALIER COUNTY
(SWC Project No. 1346)**

Mount Carmel Dam in Cavalier county was built in 1970 for the purposes of recreation and water supply. The dam is located northeast of the city of Langdon and is owned by the Cavalier County Water Resource District. The earthen

embankment is 46 feet high and 670 feet in length, and is currently classified as a medium hazard dam.

In 1995, the Mount Carmel Dam structure was modified. The total project cost of the modifications was \$870,074, of which the State Water Commission approved a 50 percent state cost share participation in the amount of \$435,037. The modifications included blocking off the 66-inch diameter principal spillway pipe, widening and raising the emergency spillway, and constructing a concrete chute spillway with a low-level drawdown. The embankment crest and downstream slope were raised 3.5 feet.

On March 29, 2003, a high school student taking photographs for a class discovered that Mount Carmel Dam was failing. Water was found to be flowing uncontrollably under the chute spillway and exiting out of a large void at the toe of the dam. Federal, state, and local emergency actions kept the dam from completely failing, but the dam requires a major restoration. The reservoir serves as the water supply source for nearly 5,000 people.

A contract was executed on January 9, 2004 with GEI Consultants, Inc. to investigate the causes of the partial failure of Mount Carmel Dam and to develop a design to repair the structure. The estimated construction and engineering inspection costs of the repair is \$3.0 million. The State Water Commission approved funding on April 22, 2003 in the amount of \$320,000 for the initial costs associated with the emergency repairs and consulting engineering services; and, on February 11, 2004 in the amount of \$30,000 for the final project design costs. It is anticipated that the Mount Carmel Dam rehabilitation project will be completed in 2004, which would enable the dam to refill in 2005 depending on runoff conditions.

Secretary Frink stated that in discussions with the Cavalier County Water Resource District, the owner of the dam, the District has agreed to provide a 25 percent local cost share (\$500,000) of the remaining unfunded portion with funds from North Central Planning Council (CBG) (\$100,000), and from the Governor's discretionary fund of the North Dakota Community Development Block Grant Program (\$400,000).

William Hardy, Chairman of the Cavalier County Water Resource District, appeared before the State Water Commission to discuss the project and the allocation of the unfunded costs. Although the District has agreed to provide a 25 percent local cost share, Mr. Hardy informed the Commission members that the local funding arrangements have not been finalized as of this meeting.

It was the recommendation of the State Engineer that the State Water Commission credit the Cavalier County Water Resource District \$900,000 for the cost to modify Mount Carmel Dam in 1995. The State Engineer also recommended that the State Water Commission allocate a 75 percent state cost share participation of an additional \$2,500,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the replacement of the spillway and general repairs to Mount Carmel Dam.

It was moved by Commissioner Halcrow and seconded by Commissioner Thompson that the State Water Commission approve state cost share participation of an additional \$2,500,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, with an additional \$400,000 of contingency funding only if no other funding is obtained, for costs associated with the replacement of the spillway and general repairs to Mount Carmel Dam. This motion is contingent upon the availability of funds.

This action increases the total state cost share contribution to \$2,850,000 for the Mount Carmel Dam.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

***APPROVAL OF REQUEST FROM
PEMBINA COUNTY WATER RESOURCE
DISTRICT FOR STATE COST PARTI-
CIPATION FOR INTERNATIONAL
BOUNDARY ROADWAY DIKE
(SWC Project No. 1401)***

A request from the Pembina County Water Resource District was presented for the State Water Commission's consideration for state cost participation for legal fees associated with a lawsuit with the Province of Manitoba regarding the international boundary roadway dike.

Secretary Frink explained the historical background relating to flood damages caused from the blockage of the natural flows in Canada by a road/dike on the Manitoba side of the border. The roadway dike was constructed in 1944, and extends from the Red River all across Pembina county and about one-half of Cavalier county. The roadway dike impedes the natural flow of water across the international border and has caused millions of dollars of damage in crop loss, erosion, damage to cities, infrastructure, farmsteads and personal property. Discussions and negotiations have continued for many years with federal, state and local officials for resolution of the issues.

In 2000, a proposal was formulated to equip border Crossings Nos. 2 and 3 with adequately-sized culverts, which is being done in conjunction with improvements to Walhalla Drains Nos. 2 and 3. The new crossings will be accompanied by channel improvements in Manitoba. A Memorandum of Understanding was approved and executed, and the amount to be paid to Manitoba for enlarging the two crossings was \$357,000. The new culverts in Crossing No. 3 have been installed, and work on Crossing No. 2 is scheduled for 2004.

Secretary Frink stated that although there has been progress, the majority of the frustration remains among the residents of Pembina county. As a result, the county is considering bringing a lawsuit in Canada to remove the roadway dike. A meeting was held with a Manitoba law firm in Cavalier, ND, on November 17, 2003 to discuss the matter. The estimated cost of the action is \$400,000. A request was received in the Office of the State Engineer on November 28, 2003 from the Pembina County Water Resource District for a 50 percent state cost share participation in the amount of \$200,000.

Secretary Frink explained that the State Water Commission has a long-standing policy to not cost share on non-project legal costs. While obtaining adequate-sized culverts through the dike is not equal to complete removal, he referred to the negotiations that were successful in 2002. Ultimately, the court decision will be determined in Canada, thus, winning a lawsuit in Manitoba is not a certainty. Therefore, it was the recommendation of the State Engineer that the State Water Commission not cost share with Pembina County, but to continue the discussions with the Province of Manitoba on Crossings Nos. 4, 5, and 6.

Neil Fleming, Cavalier County States Attorney, and members of the Pembina County Water Resource District appeared before the State Water Commission to present background and technical information and to request the Commission's favorable consideration of the cost share request.

It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission approve the request from the Pembina County Water Resource District for a 50 percent state cost participation, not to exceed \$200,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for legal fees associated with a lawsuit with the Province of Manitoba regarding the international boundary roadway dike.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF FISCAL YEAR
2004 MR&I FEDERAL BUDGET
(SWC Project No. 237-03)**

Secretary Frink presented and recommended the proposed allocation of \$2,800,000 Fiscal Year 2004 MR&I Water Supply program budget for the State Water Commission's consideration, contingent upon the availability of federal funds and subject to future revisions. Secretary Frink explained that if the State Water Commission acts affirmatively on the recommendations (*shown in italics*) as presented, all available federal dollars through Fiscal Year 2004 would be committed. On March 2, 2004, the Garrison Diversion Conservancy District executive committee approved the proposed budget for Fiscal Year 2004:

Secretary Frink presented and recommended the proposed allocation of \$2,800,000 Fiscal Year 2004 MR&I Water Supply program budget for the State Water Commission's consideration,

Northwest Area Water Supply Project (Minot Component): Contract 2-1C consists of approximately 61,006 (about 11.6 miles) of 36-inch steel or ductile iron pipe extending from N.D. Highway 23 to the east side of the city of Max. The plans and specifications for contract 2-1C were received on November 21, 2003 and submitted to the Bureau of Reclamation and the North Dakota Department of Health for review. On February 26, 2004, bids were opened on contract 2-1C. The project engineer's estimate for construction of this contract is \$6.33 million, and the project cost is approximately \$7.5 million.

The recommendation provides for a federal Fiscal Year 2004 MR&I grant of up to \$1,550,000, not to exceed 65 percent of the eligible project costs, contingent upon the availability of federal funds and subject to future revisions.

Williams Rural Water Expansion: This existing rural water system is planning an expansion in Williams county. The city of Williston provides bulk water to the rural water system and will provide for the expansion. The project would add 144 rural users, a school, and industrial users with an estimated cost of \$4.02 million. The project has east, central, west and north units. The system could be constructed in two phases. One phase could have the west, central, and north units, and the other phase could have the east unit. A 70 percent grant of \$1,060,000 was approved in 2003 for design and construction. The feasibility study cost was \$71,000 and was approved for a MR&I grant of \$40,000.

The recommendation provides for an additional federal Fiscal Year 2004 MR&I grant of up to \$1,060,000, not to exceed 70 percent of the eligible project costs, contingent upon the availability of federal funds and subject to future revisions.

<u>Project</u>	<u>Activity</u>	<u>FY 2004 Proposed</u>
NAWS (Minot)	D&C	\$1,550,000
Williams Rural Water Expansion	D&C	\$1,060,000
Administration		<u>\$ 190,000</u>
Total		\$2,800,000

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve the proposed allocation of \$2,800,000 Fiscal Year 2004 MR&I Water Supply program budget as recommended by the State Engineer. This motion is contingent upon the availability of federal funds and subject to future revisions.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

***APPROVAL OF FUNDING FROM
THE WATER DEVELOPMENT AND
RESEARCH FUND FOR STUTSMAN
COUNTY RURAL WATER PROJECT
(SWC Project No. 237-04)***

A request was presented for the State Water Commission's consideration for the expenditure of \$24,700 from the Water Development and Research Fund (Garrison Diversion Conservancy District) for the Stutsman County Rural Water feasibility study and hydraulic modeling.

The Stutsman County Rural Water District is considering an expansion to address inadequacies in the rural system, which limits their ability for the addition of rural water users. The system currently serves 1,100 rural users. The district requested funding to complete a full-system hydraulic model and feasibility study to confirm the need for \$1.5-\$2.5 million in infrastructure improvements. The district intends to complete GIS mapping of the system. The hydraulic model and feasibility study has an estimated cost of \$38,000.

It was the recommendation of the State Engineer that the State Water Commission approve a 65 percent grant, not to exceed \$24,700 from the Water Development and Research Fund, for the Stutsman County Rural Water hydraulic model and feasibility study. As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development and Research Fund. The District's executive committee approved the request at its March 2, 2004 meeting.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve a 65 percent grant, not to exceed \$24,700 from the Water Development and Research Fund, for the Stutsman County Rural Water hydraulic model and feasibility study. This motion is contingent upon the availability of funds and subject to future revisions.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF FUNDING FROM
THE WATER DEVELOPMENT AND
RESEARCH FUND FOR WILLIAMS
RURAL WATER EXPANSION PROJECT
(SWC Project No. 237-04)**

A request was presented for the State Water Commission's consideration for the expenditure of \$600,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District) for the William Rural Water Expansion project.

This existing rural water system is planning an expansion in Williams county. The city of Williston provides bulk water to the rural water system and will provide for the expansion. The project would add 144 rural users, a school, and industrial users with an estimated cost of \$4.02 million. The project has east, central, west and north units. The system could be constructed in two phases. One phase could have the west, central, and north units, and the other phase could have the east unit. A 70 percent grant of \$1,060,000 was approved in Fiscal Year 2003 for design and construction; and an additional 70 percent grant of \$1,060,000 was approved in Fiscal Year 2004. The feasibility study cost was \$71,000 and was approved for a MR&I grant of \$40,000.

It was the recommendation of the State Engineer that the State Water Commission approve \$600,000 from the Water Development and Research Fund in the form of a 0 percent interest loan to the MR&I fund, for the Williams Rural Water Expansion design and construction project. As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development and Research Fund. The District's executive committee approved the request at its March 2, 2004 meeting.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve \$600,000 from the Water Development and Research Fund in the form of a 0 percent interest loan to the MR&I fund, for the Williams Rural Water Expansion project for design and construction. This motion is contingent upon the availability of funds and subject to future revisions.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**SAFE DRINKING WATER ACT -
APPROVAL OF PROJECT
PRIORITY LIST IN FY 2004
INTENDED USE PLAN
DATED FEBRUARY 27, 2004
(SWC File AS/HEA)**

The Drinking Water State Revolving Loan Fund was authorized by Congress in 1996 under the Safe Drinking Water Act with the intention of assisting public water systems in complying with the Act. Funding in North Dakota for public water systems is in the form of a loan program

administered by the Environmental Protection Agency through the North Dakota Department of Health. North Dakota Century Code ch. 61-28.1, Safe Drinking Water Act, gives the Department the powers and duties to administer and enforce the Safe Drinking Water program, and to administer the program.

Section 1452(b) of the Safe Drinking Water Act requires each state to annually prepare an Intended Use Plan. The plan is to describe how the state intends to use the funds to meet the program objectives and further the goal of protecting public health. A public review period is required prior to submitting the annual plan to the Environmental Protection Agency as part of the capitalization grant application process. The North Dakota Department of Health held public hearings on the draft Intended Use Plan on February 26, 2004; no comments were received.

The State Water Commission's role in the program is defined in subsections 3 and 4 of § 61-28.1-12. Subsection 3 states that the Department shall administer and disburse funds with the approval of the State Water Commission. Subsection 4 states that the Department shall establish assistance priorities and expend grant funds pursuant to the priority list for the Drinking Water State Revolving Loan Fund after consulting with and obtaining the approval of the State Water Commission.

Jeff Hauge, North Dakota Department of Health, presented the fiscal year 2004 Intended Use Plan for the North Dakota Drinking Water Revolving Loan Fund, dated February 27, 2004, for the State Water Commission's consideration. The 2004 Intended Use Plan is attached hereto as **APPENDIX "G"**. The comprehensive project priority list includes 77 projects, with a cumulative total project cost of \$163.7 million. The fundable list includes \$31.8 million for fiscal years 1997 through 2004.

It was the recommendation of the State Engineer that the State Water Commission approve the project priority list for fiscal year 2004 as listed in the Intended Use Plan, dated February 27, 2004, and authorize the Department to administer and disburse fiscal years 1997 through 2004 program funds pursuant to the fiscal year 2004 Intended Use Plan.

It was moved by Commissioner Hofstad and seconded by Jeff Olson representing Commissioner Roger Johnson that the State Water Commission approve the project priority list for fiscal year 2004 as listed in the Intended Use Plan, dated February 27, 2004; and authorize the North Dakota Department of Health to administer and disburse fiscal years 1997 through 2004 program funds pursuant to the fiscal year 2004 Intended Use Plan.

Commissioners Halcrow, Hillesland, Hofstad, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**GARRISON DIVERSION
CONSERVANCY DISTRICT
REPORT
(SWC Project No. 237)**

The Dakota Water Resources Act of 2000 authorized the Secretary of the Interior to conduct a comprehensive study of the water quantity and quality needs of the Red River valley in North

Dakota and possible options for meeting those needs. The Act identified two project-related studies which need to be completed: the *Report on Red River Valley Water Needs and Options*, and the *Red River Valley Water Supply Project Environmental Impact Statement (EIS)*. The Bureau of Reclamation will be the sole preparer of the Needs and Options report, while the State of North Dakota and the Bureau will jointly prepare the EIS. Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor.

The Red River Valley Water Supply Study will result in the completion of the Needs and Options report and a draft EIS. These reports will consider the study needs assessment, hydrology, engineering, environmental, financial analysis, and biota transfer issues. The preparation of these reports essentially began in January, 2003, and the reports are scheduled for completion in December, 2005.

David Johnson, district engineer for the Garrison Diversion Conservancy District, provided a status report on the efforts of the Red River Valley Water Supply Study, which is attached hereto as **APPENDIX "H"**.

The Commission members were extended an invitation to the premier event "More Precious Than Gold" on April 6, 2004 at the Fargo Theatre in Fargo, ND. The original documentary, developed by Prairie Public television, takes an in-depth look at past, current and future water issues in North Dakota.

**FARGO-MOORHEAD AND
UPSTREAM FEASIBILITY STUDY
(SWC Project No. 305)**

The proposed Corps of Engineers Fargo-Moorhead and Upstream Feasibility study encompasses the area of Fargo-Moorhead and upstream to the

South Dakota border, and provides a comprehensive watershed approach to analyze potential flood damage reduction/environmental enhancement projects. The study was originally approached in two phases but has since been revised to include three phases. Phase I will focus on the development of tools to analyze potential projects for flood damage reduction. Phases II and III will expand on the analysis of economic and environmental impacts/benefits, the design of structural works, and address the NEPA compliance. The decision to proceed with Phases II and III will be made at the conclusion of Phase I.

On August 15, 2002, the State Water Commission approved a request from the Richland County Water Resource District and the Richland County Commission to be the study's non-federal sponsor with the assumption that the State of Minnesota would co-sign the agreement. The Commission allocated a 50 percent state cost share participation of the non-federal study costs in the amount of \$267,430 from the funds appropriated to the State Water Commission in the 2001-2003 biennium; the allocation was carried over to the 2003-2005 biennium. Of this amount, 50 percent (\$133,715) would be reimbursed to the Commission by local supporters.

The Corps of Engineers policy requires that the non-federal sponsors commit to the costs for all of the study phases when the agreement is executed. The revised plan of study indicates a total study cost of \$3,768,000 (50 percent federal/50 percent non-federal sponsors in North Dakota and Minnesota). The revised Phase I is estimated to cost a total of \$519,000, of which the non-federal share would be \$259,500 in cash and in-kind services (North Dakota's contribution will be approximately \$120,500 cash and \$45,000 of in-kind services). The State Water Commission's contribution is anticipated to be \$60,250 in cash and \$10,000 in-kind services. The balance of North Dakota's contribution is being formalized through an agreement with local sponsors including the Red River Joint Water Resource District, North Dakota Game and Fish Department, Red River Basin Commission, Richland County Water Resource District, and the Southeast Cass Water Resource District.

**MISSOURI RIVER UPDATE
(SWC Project No. 1392)**

Todd Sando reported that the drought conditions continue to persist in the Missouri River basin. As of February 15,

2004, system storage in the six mainstem reservoirs was 38.1 million acre-feet (MAF), 17 MAF below the average system storage for the end of February, 2004 and 4.3 MAF less than last year. System storage reached a record low of 38.0 MAF in mid-February, 2004. Lake Sakakawea was at an elevation of 1814.5 feet msl, the lowest elevation since it initially filled, 5.3 feet lower than a year ago, and 19 feet below its average end of February elevation.

The Corps of Engineers is predicting runoff above Sioux City for 2004 to be 19.5 MAF, 77 percent of normal. Under the three-week forecast, the Corps estimated Lake Sakakawea at elevation 1814.2 feet msl by March 3, 2004.

The elevation of Lake Oahe was 1578.7 feet msl on February 25, 2004, 8.3 feet lower than last year and 24.6 feet lower than its average end of February elevation. This elevation is 2.5 feet above the record low elevation for Lake Oahe of 1576.2, reached on December 12 and 17, 2003. Under the three-week forecast, the Corps estimated Lake Oahe will be at elevation 1580.7 feet msl by March 15, 2004.

The elevation of Fort Peck was 2204.1 feet msl on February 25, 2004, 7.3 feet lower than last year and 26.6 feet lower than its average end of February elevation. The three-week forecast estimated Fort Peck at elevation 2203.9 feet msl by the end of February, 2004, and then begin to rise.

On February 3, 2004, the mountain snow pack was 99 percent of normal in the reach above Fort Peck, and 86 percent of normal in the reach between Fort Peck and Garrison. Normally, 60 percent of the peak snow pack in the mountains has accumulated by early February. Unlike the last several years, there is a fair amount of snow on the plains, which should provide some runoff this spring, however, the runoff will be reduced by the storage available in the soil profile, stock dams, and tributary reservoirs that have been drawn down during the drought.

On February 26, 2004, the Corps of Engineers released a draft revised Master Manual for the Missouri River, a final Environmental Impact Statement on the proposed Master Manual, and a draft Annual Operating Plan for 2004. The proposed Master Manual does include benefits for Lake Sakakawea and Lake Oahe, but clearly less than what North Dakota had requested.

Mr. Sando stated that seven out of the eight Missouri River basin states had agreed to support specific drought conservation measures (DCM) for the reservoirs. The Corps included the DCMs into all of their six alternatives during the EIS process, however, the DCMs included in the latest proposal are less than the original measures. The impact of these changes varies with the level of drought. It is estimated that Lake Sakakawea would now be at elevation 1820 msl with the original DCMs and at elevation 1818 msl with the revised DCMs. Both of the DCMs include curtailing navigation at 31 million acre-feet compared to 23.5 million acre-feet for the current Master Manual. Mr. Sando explained this raises the no navigation service level from 1775 msl to 1795 msl for Lake Sakakawea. This is a significant benefit during a 1930s level drought. The revised Master Manual also requires the Secretary of the Army to approve back-to-back years with no navigation. The deadline for submission of comments on the final Environmental Impact Statement is March 19, 2004.

The Corps of Engineers has scheduled a public meeting on April 7, 2004 in Bismarck, North Dakota, to receive comments on the 2004 Annual Operating Plan for the Missouri River.

**BOMMM JOINT BOARD REPORT
RELATING TO MISSOURI RIVER
ACTIVITIES ON THE GARRISON
TO OAHE REACH
(SWC Project No. 1392)**

Andy Mork, BOMMM Joint Board chair, appeared before the State Water Commission to provide the following update on Missouri River activities on the Garrison to Oahe reach:

Missouri River Protection and Improvement Act of 2000

In 2000, Congress passed legislation to help address the impacts of sedimentation on the river corridor in North Dakota. A part of that legislation called for the establishment of the Missouri River Trust. At the end of 2003, the Trust was not functioning. The BOMMM board is concerned the window of opportunity to access up to \$5 million per year to address corridor issues will be lost because of inaction. The BOMMM board requested the State Water Commission to continue to work with the Governor's staff to move this issue forward.

Missouri River Corridor Concept Plan and Comprehensive Plan

The BOMMM board completed the preparation of the Missouri River Corridor Concept Plan in September, 2003. This document was an inventory document prepared for the five BOMMM county commissions to assist in deciding whether to complete a full comprehensive plan for the corridor. Because of the sovereign land issues and the related corridor issues, the State Water Commission funded a portion of this inventory effort. This document and the website identified in the document are the results of that funding.

The counties are reluctant to move forward in spite of the need identified in the document. The city of Bismarck recently expanded its territorial limits in order to get better control of growth management due to the county's reluctance to take action.

The BOMMM board is encouraging the counties to complete a comprehensive plan jointly and implement the necessary ordinances to achieve the plan. The Board requested the State Water Commission's continued support in this effort.

Prison Farm Bank Stabilization and Aquatic Restoration Demo Study Project

The BOMMM board has been working with the State Water Commission, the Prison Farm, North Dakota Game and Fish Department, Corps of Engineers, and others to develop a Bank Stabilization and Aquatic Restoration Project on Prison Farm land in Burleigh county. The project area includes approximately 9,000 lineal feet of eroding banks.

The Corps of Engineers agreed to work on the project through its Section 1135 Program "Environmental Improvements Relating to Existing Corps Projects". The federal cost share will be 75 percent with a 25 percent local match. The project will impact both sovereign and state lands in a positive manner. It is the intent of the BOMMM board to request state cost share participation for the local share.

Corps Implementation Plan (IP) for the Non-Flow Creation and Maintenance of the Emergency Sandbar Habitat Portion of the 2000 Biological Opinion

The Corps of Engineers and the U.S. Fish and Wildlife Service are proposing to increase the islands and sandbars in the Missouri River in North Dakota. Presently, an average of 12.5 surface acres per mile exists. The plans are to increase that average number to 50 acres per mile by the year 2015. The creation of this amount of islands and sandbars could result in impacts to recreational boating, sports fisheries, floodplain water levels, and water intakes.

Mr. Mork provided comments on the final Missouri River Environmental Impact Statement, which are attached hereto as **APPENDIX "I"**.

2005-2007 WATER DEVELOPMENT BIENNIAL REPORT (SWC Project No. 322)

As part of the State Water Commission's efforts to maintain the 1999 State Water Management Plan and to develop a Water Development Biennial Report for

the 2005-2007 biennium, project and cost share information from potential project sponsors statewide was solicited. The purpose of this effort is to help the State Water Commission comprehensively identify North Dakota's potential water development projects, their timeframe of implementation, and expected funding requirements for the 2005-2007 biennium and beyond. The project information collected for the 2005-2007 report will be used in the State Water Commission's budgeting process, and the information will be presented to the 59th Legislative Assembly in 2005 to document the state's water development/management needs.

The water projects and related cost share information provided by the project sponsors will be entered into the project database. Preliminary estimates of water development funding needs for the 2005-2007 biennium will be provided to the State Water Commission at a future meeting.

**RESOLUTION OF APPRECIATION
TO JAMES LANDENBURGER,
SWC EMPLOYEE
(SWC Resolution No. 2004-03-508)**

A resolution of appreciation to James Landenburger was presented for the State Water Commission's consideration. Mr. Landenburger resigned on February 6, 2004, where he served the

State of North Dakota and the State Water Commission for six years. He served in the position of the Devils Lake project engineer since June, 2000.

It was moved by Commissioner Olin, seconded by Commissioner Hofstad, and unanimously carried, that the State Water Commission approve Resolution No. 2004-03-508, Resolution of Appreciation to James Landenburger. SEE APPENDIX "J"

Secretary Frink informed the State Water Commission that John Paczkowski, presently a water resource engineer with the State Water Commission's water development division, was hired for the Devils Lake project engineer position vacated by Mr. Landenburger. Mr. Paczkowski assumed this position on February 9, 2004.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the meeting at 4:20 PM.

John Hoeven, Governor
Chairman, State Water Commission

SEAL

Dale L. Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
State Water Commission

